

No. 13-30962

**UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT**

LEWIS E. LOVE
PLAINTIFF-APPELLANT

V.

COLONEL JODY BENDILY, Unit 1; **ASSISTANT WARDEN DENNIS GRIMES**, Unit 1; **STEVE RADER**, Unit 1; **DEPUTY WARDEN JAMES LEBLANC**, DCI; **SECRETARY RICHARD STALDER**, Department of Corrections,

DEFENDANTS-APPELLEES

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF LOUISIANA**

Civil Action No. 08-506 SDD-SCR

Honorable Shelly D. Dick, District Judge, presiding

ORIGINAL BRIEF FOR DEFENDANTS-APPELLEES

Jody Bendily, Dennis Grimes, Steve Rader, James LeBlanc, and Richard Stalder

Respectfully submitted,

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons as described in the fourth sentence of 5th Cir. Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this Honorable Court may evaluate possible disqualification or recusal.

1. Lewis E. Love, plaintiff *pro se*
2. James M. LeBlanc, Secretary
Louisiana Department of Public Safety and Corrections
3. Richard Stalder, Secretary *retired*
Louisiana Department of Public Safety and Corrections
4. Colonel Jody Bendily
Louisiana Department of Public Safety and Corrections
5. Assistant Warden Dennis Grimes
Louisiana Department of Public Safety and Corrections
6. Warden Steve Rader
Louisiana Department of Public Safety and Corrections

7. James D. “Buddy” Caldwell, Attorney General for the State of Louisiana
Louisiana Department of Justice (Baton Rouge)
8. Michael Courtney Keller, Assistant Attorney General,
Louisiana Department of Justice (New Orleans)
9. Phyllis Esther Glazer, Assistant Attorney General,
Louisiana Department of Justice (New Orleans)

Respectfully submitted,

**JAMES D. “BUDDY” CALDWELL
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STATEMENT REGARDING ORAL ARGUMENT

Pursuant to 5th Cir. Rule 28.2.4, the defendants-appellees herein respectfully suggest that oral argument is not likely to assist this Honorable Court with adjudicating this matter. The plaintiff-appellant's lawsuit was dismissed for failure to prosecute because he did not keep the District Court informed of his address. The rules requiring *pro se* litigants to provide up-to-date contact information are well established and easy to follow. As a result of plaintiff's failure to notify the court of his new address, a court order was returned to the Court as undeliverable. The Court patiently waited approximately six-months for the plaintiff to reappear. He did not. Then, left with no apparent way to contact the plaintiff and no indication from the plaintiff that he cared to continue with this suit, the Court exercised its discretion and dismissed the case. There was no abuse of discretion. As such, the defendants-appellees decline to request oral argument and do not believe oral argument would be necessary or helpful in this appeal.

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STATEMENT OF JURISDICTION

The plaintiff-appellant, Lewis Love, filed the instant suit pro se and in forma pauperis under 42 U.S.C. §1983. The District Court had subject matter jurisdiction over the plaintiff's suit pursuant to 28 U.S.C. §1331 and §1343. The Court entered a final judgment dismissing this suit in its entirety. ROA.1500. Plaintiff filed a timely notice of appeal. ROA.1501. This Honorable Court has original appellate jurisdiction over the instant appeal pursuant to 28 U.S.C. §1291.

STANDARD OF REVIEW

The District Court dismissed this suit for failure to prosecute¹ pursuant to Fed. R. Civ. P. 41(b) because the plaintiff failed to inform the District Court of his proper mailing address, a ruling (ROA.1464) was returned undeliverable, and over six (6) months passed without word from the plaintiff on his proper address. ROA.1498.

Rule 41(b) allows the district court to dismiss an action upon the motion of a defendant, or upon its own motion, for failure to prosecute. *Morris v. Ocean Systems*, 730 F.2d 248, 251 (5th Cir.1984); *Rogers v. Kroger Co.*, 669 F.2d 317, 319-20 (5th Cir.1982). This authority is based on the “courts’ power to manage and administer their own affairs to ensure the orderly and expeditious disposition of cases.” *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-31, 82 S.Ct. 1386, 1389, 8 L.Ed.2d 734 (1962).

¹ The plaintiff also argues that “[t]he disputed factual issues are Material under the Eighth Amendment.” ROA.1508, et seq. (Point II). The District Court did not render summary judgment in favor of the defendants or otherwise rule on the merits in defendants’ favor. Therefore, this issue, which was admittedly briefed “in an abundance of caution” is not on appeal and will not be briefed herein by the defendants-appellees. See ROA.1510.

Berry v. CIGNA/RSI-CIGNA, 975 F.2d 1188, 1190-91 (5th Cir. 1992) (internal footnote omitted).

When a subsequent suit would be barred by the applicable statute of limitations, the Rule 41(b) dismissal will be considered “with prejudice” regardless of any contrary statement in the Judgment of dismissal. *Collins v. LeBlanc*, 477 F. App’x 211 (5th Cir. 2012) (citing *Wallace v. Kato*, 549 U.S. 384, 387, 127 S.Ct. 1091, 166 L.Ed.2d 973 (2007); *Berry v. CIGNA/RSI-CIGNA*, 975 F.2d 1188, 1191 (5th Cir.1992)). The Judgment in this case dismissed plaintiff’s suit expressly “without prejudice.” ROA.1500. However, a subsequent suit would be barred by the applicable statute of limitations.

Plaintiff filed this suit under 42 U.S.C. §1983. Louisiana’s one-year prescriptive period applicable to personal injury actions is applicable to suits under Section 1983. See *Jacobsen v. Osborne*, 133 F.3d 315, 319 (5th Cir. 1998). Plaintiff submitted his suit to prison authorities for filing on August 8, 2008, the date he signed the Complaint. ROA.19. As such, the date of filing is deemed to be August 8, 2008. See *Causey v. Cain*, 450 F.3d 601, 604 (5th Cir. 2006) (citing *Houston v. Lack*, 487 U.S. 266, 270-71, 108 S.Ct. 2379, 101 L.Ed.2d 245(1988)) (a pro se prisoner’s pleading is deemed “filed” at the moment it is delivered to prison authorities for forwarding to the district court.)

Generally, a suit filed in a court of competent jurisdiction and venue interrupts liberative prescription. La. C.C. art. 3462. Such an interruption of prescription would provide the plaintiff a full year to re-file this suit once the dismissal became final. See La. C.C. art. 3466. However, the dismissal of this suit under Fed. R. Civ. P. 41(b) erased any interruption of prescription that occurred when suit was filed. See *Hilbun v. Goldberg*, 823 F.2d 881, 883 (5th Cir.1987), *cert. denied*, 485 U.S. 962, 108 S.Ct. 1228, 99 L.Ed.2d 427 (1988) (discussing La. C.C. art. 3463). The incident necessarily occurred before August 8, 2008, the date suit was filed.² Well over one year has passed since then; and, without the benefit of an interruption of prescription, a subsequent suit would be prescribed. The Judgment dismissing this suit, therefore, should be considered “with prejudice.”

A district court has limited discretion to dismiss a suit with prejudice under Rule 41(b). Review by this Honorable Court focuses on alleged abuse of that limited discretion. Specifically, this Honorable Court will examine whether, “a clear record of delay or contumacious conduct by the plaintiff exists and a lesser sanction would not better serve the interests of justice.” *Millan v. USAA Gen. Indem. Co.*, 546 F.3d 321, 326 (5th Cir.2008).

² Even if the plaintiff alleged that the tort committed against him was continuous, it necessarily ended when he was released from state custody on or about October 15, 2010. See ROA.1398 (Notice of Change of Address after plaintiff was released from state custody). See also ROA.1485 (Opinion dismissing as moot claims for injunctive relief).

STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

Whether the District Court properly exercised its discretion and dismissed the pro se plaintiff's suit for failure to prosecute when, for over nine months, plaintiff failed to apprise the Court of his proper mailing address?

STATEMENT OF THE CASE

The pertinent facts and procedural history of this case relate to the plaintiff's nine-month absence. Plaintiff was incarcerated at the Dixon Correctional Institute in Jackson, Louisiana, at the time he filed this lawsuit. ROA.12. He was released from custody on parole supervision. See ROA.1506. By letter dated November 7, 2010, plaintiff notified the District Court of his change of address. ROA.1398. This was the last action in the record taken by the plaintiff until he filed the notice of appeal nearly three years later. See ROA.1501.

According to the plaintiff, he was arrested again on or about June 21, 2012. ROA.1507. He claims he was "briefly incarcerated from June 21, 2012 to April 4, 2013." *Id.* During that period of over nine months, he did not notify the District Court of his address.

The plaintiff alleges his permanent address (beginning October 15, 2010), is 7324 Alberta Drive, Baton Rouge, Louisiana 70808. ROA.1506. He alleges this address was valid throughout his nine-month incarceration. Furthermore, plaintiff alleges he made arrangements with a Ms. Bessie Clark to "represent plaintiff and

handle any and all affairs to include correspondence (retaining and handling mail).” ROA.1507. There is no indication in the record that Ms. Clark is an attorney. Ms. Clark never entered an appearance on plaintiff’s behalf or otherwise indicated to the Court that she would accept mail for the plaintiff. Regardless of the alleged permanency of the address and any arrangements he made regarding his mail, it is undisputed that a Ruling issued during plaintiff’s incarceration was sent to the Alberta Drive address and was returned undeliverable. ROA.1484.

On November 8, 2012, the defendants filed a Motion for Leave to File a Motion to Dismiss. ROA.1442. On January 16, 2013, the Magistrate Judge issued a Ruling granting the Motion for Leave. ROA.1464. The Ruling was returned undeliverable on January 25. ROA.1484. Plaintiff did not file an opposition to defendants’ motion to dismiss or otherwise appear. The Motion to Dismiss was granted in part. ROA.1485.

Following the return of the Ruling, over six months passed without any action or appearance by the plaintiff. On August 9, 2013, the District Court set a pretrial conference to be held October 24, 2013. ROA.1497. On August 12, 2013, , the District Court entered a Ruling and Judgment dismissing plaintiff’s suit for failure to prosecute. ROA.1498-1500. Shortly thereafter, the plaintiff filed a notice of appeal. ROA.1501. This timely appeal follows.

SUMMARY OF THE ARGUMENT

The plaintiff failed to keep the Court informed of his mailing address. Pro se litigants are required by local rule to keep the Court up-to-date on their contact information. See MDLA LR 11.1, 41.2. These rules are clearly intended to prevent unnecessary delays caused by litigants who cannot be contacted. In this case, the record indicated the plaintiff was not receiving court notices, see ROA.1484, and so the District Court dismissed the suit rather than hold a futile scheduling conference with only defense counsel in attendance.

The plaintiff conclusorily asserts that the Court should have considered “less severe alternatives” before dismissing his suit. See ROA.1507. However, when the Court could not contact the plaintiff, it was left with no option but to dismiss the suit. That being said, the Court waited over six months for the plaintiff to reappear before entering the dismissal. The Court did not abuse its discretion by choosing dismissal over further delay.

By failing to change his address with the Court, the plaintiff effectively declined to prosecute his lawsuit. Considering the applicable local rules and the lengthy opportunity afforded to the plaintiff to appear, the dismissal of his case for failure to prosecute was proper and should be affirmed.

ARGUMENT

The plaintiff alleges the District Court abused its discretion “in view of all the facts and circumstances of this case.” ROA.1507. He contends his permanent address never changed, that he was only temporarily incarcerated, that he continued to receive mail while incarcerated, and that he never lost interest in prosecuting this lawsuit. See ROA.1506-1507. None of these purported “facts and circumstances” establish that the District Court abused its discretion by dismissing this suit for failure to prosecute. The plaintiff’s case was properly dismissed and for the reasons explained hereinafter, the Judgment should be affirmed.

I. PLAINTIFF ADMITTEDLY FAILED TO APPRISE THE COURT OF AN ADDRESS CHANGE FOR A PERIOD OF OVER NINE MONTHS.

The plaintiff was incarcerated for over nine (9) months, from June 21, 2012 to April 4, 2013, and did not inform the Court of his incarceration. ROA.1507. As a result, a Ruling was returned undeliverable. ROA.1484. The Court waited over six months for the plaintiff to appear and inform the Court of his proper mailing address. He did not. The case was then dismissed pursuant to Middle District of Louisiana Local Rule 41.2 for failure to prosecute. ROA.1498-1500.

II. PLAINTIFF’S FAILURE TO NOTIFY THE DISTRICT COURT OF HIS CHANGE OF MAILING ADDRESS VIOLATED LOCAL RULES AND WARRANTED DISMISSAL.

The plaintiff undeniably violated the Middle District of Louisiana Local Rules by failing to inform the Court for over nine months of his proper mailing

address. “It is well established that under Rule 41(b) of Federal Rules of Civil Procedure the district court has discretion to dismiss a suit for failure to prosecute if the plaintiff fails to comply [...] with the rules of civil procedure.” *Connolly v. Papachristid Shipping Ltd.*, 504 F.2d 917, 920 (5th Cir. 1974) (citing *Link v. Wabash Railway Co.*, 370 U.S. 626, 82 S.Ct. 1386, 8 L.Ed.2d 734 (1962)). Litigants must also comply with local rules in addition to court orders and the Federal Rules of Civil Procedure. Therefore, a suit may be dismissed under Rule 41(b) for failure to prosecute if a plaintiff fails to comply with Local Rules.

Middle District of Louisiana Local Rule 41.2, which was referenced by the plaintiff in his brief at pp. 5-6 (ROA.1505-1506), states in pertinent part:

The failure of an attorney or pro se litigant to keep the court apprised of an address change may be considered cause for dismissal for failure to prosecute when a notice is returned to a party or the court for the reason of an incorrect address and no correction is made to the address for a period of 30 days.

MDLA LR 41.2.

Additionally, Local Rule 11.1 states, “[e]ach attorney and pro se litigant has a continuing obligation to apprise [the] court of any address change.” MDLA LR 11.1. Local Rule 11.1 is a corollary to Fed. R. Civ. P. 11(a) which states in pertinent part:

Every pleading, written motion, and other paper must be signed by at least one attorney of record in the attorney’s name--**or by a party personally if the party is**

unrepresented. The paper must state the **signer's address**, e-mail address, and telephone number.

Fed. R. Civ. P. 11(a) (emphasis added). The plaintiff did not file any pleading, motion or other paper during his nine months of incarceration. So, he did not specifically violate Fed. R. Civ. P. 11. Nonetheless, Rule 11 establishes that a pro se litigant must keep the Court apprised of *his* mailing address throughout the litigation as every filing must state the signer's address. Local Rule 11.1 establishes the sanction for failing to adhere to Rule 11's mandate.

The Eastern District of Louisiana, when applying its version of the same Local Rules, see EDLA LR 11.1, 41.3.1, explained:

The foregoing Rules impose an affirmative obligation on parties to keep the court apprised of their current mailing addresses and relieves court personnel of that burden. The importance of this obligation was noted by the Fifth Circuit years ago when it stated that “[i]t is incumbent upon litigants to inform the clerk of address changes, for it is manifest that communications between the clerk and the parties or their counsel will be conducted principally by mail.” *Perkins v. King*, 759 F.2d 19 (5th Cir.1985)(table).

Pollard v. Gusman, CIV.A.06-3941, 2006 WL 3388491 (E.D. La. Nov. 21, 2006).

The Fifth Circuit has correspondingly explained:

We recognize the real importance of cooperation from parties and attorneys to guarantee that litigation proceeds expeditiously on the all too crowded dockets of the district courts. We recognize further that a court has the inherent power to manage its calendar and to guarantee that errant lawyers and parties recognize that it has the

power to impose reasonable and appropriate sanctions to ensure that its orders are complied with.

Connolly v. Papachristid Shipping Ltd., 504 F.2d 917, 920 (5th Cir. 1974).

The District Court entered a Ruling on January 16, 2013. ROA.1464. The Ruling was mailed to the plaintiff at his address of record. *Id.* It was returned undeliverable January 25, 2013. ROA.1484. Again, it is undisputed that, at the time the Order was rendered, the plaintiff was incarcerated and *not* at the address in the record. ROA.1507. The plaintiff did not change his address, file any pleading, motion, or other paper, or appear in any way for over six months after the Ruling was returned. Plaintiff's non-compliance with Local Rules 41.2 and 11.1 is unequivocal and dismissal for violating those Rules was entirely proper.

A. That plaintiff returned to the previous address of record after his incarceration and had allegedly made arrangements for receiving mail while incarcerated did not cure his failure to provide the Court with his actual address.

The plaintiff alleges his "permanent address" did not change even though he was incarcerated and not actually at that address for over nine months. ROA.1506. The plaintiff identifies his "permanent address" as 7324 Alberta Drive, Baton Rouge, Louisiana. *Id.* The fact that the plaintiff apparently returned to that address after his release from jail, see ROA 1515, does not change the fact that the Ruling issued while he was in jail was properly addressed to 7324 Alberta Drive and was returned to the Court as undeliverable. ROA.1484. Compare *Fuller v.*

Harris Cnty., 207 F. App'x 450, 451 (5th Cir. 2006) (reversing sua sponte dismissal for failure to prosecute upon finding that plaintiff “did not change his address and that the order was returned due to an inadvertent error in addressing the envelope.”) The simple fact is that the plaintiff was not at his purported “permanent address” for over nine months and, as a result, mail delivered to that address was returned-to-sender undeliverable.

Plaintiff further alleges he made arrangements with Bessie Clark to “represent plaintiff and handle any and all affairs to include correspondence...” Plaintiff’s brief at p. 7 (and Exhibit 4). Presumably, plaintiff intended Ms. Clark to forward him any mail he received at the Alberta Drive address. See ROA.1511-1514. Clearly, that did not occur with the Ruling at issue. ROA.1484.

Pro se litigants are responsible for conducting their own cases. See 28 U.S.C. §1654. “There is a point at which even *pro se* litigants must become responsible for the prosecution of their own cases if their claims are to warrant the court’s attention.” *Bookman v. Shubzda*, 945 F. Supp. 999, 1005 (N.D. Tex. 1996). It is not “unjustifiably onerous” to require a *pro se* litigant keep the Court apprised of his own mailing address. See *id.* Plaintiff’s purported representation by Ms. Clark does not excuse his failure to keep the Court apprised of his mailing address.

Furthermore, no litigant may be “represented” in a federal lawsuit by anyone other than a licensed attorney.³ See 28 U.S.C. §1654. There is no indication that Ms. Clark is an attorney. Even if she is, she did not make an appearance in court on behalf of the plaintiff or otherwise inform the Court that she would be accepting mail for the plaintiff.

The record reflects that the plaintiff is and always has represented himself in this matter. In that capacity, he is responsible for prosecuting his own suit and for ensuring the Court is able to contact him. Plaintiff failed to keep the Court apprised of his address and said failure was his alone. See ROA.1507 (speculating that the U.S. Mail Carrier may have “inadvertently [...] placed [the service] in an adjacent mailbox...”).

B. Plaintiff’s pro se status does not excuse his failure to comply with Local Rules with which he had previously adhered.

The plaintiff alleges, the “Court’s actions have denied the pro se plaintiff a fair opportunity to be heard, considering a pro se litigant is held to less stringent standards than formal pleadings as lawyers because the pro se litigant has had no legal schooling or training.” ROA.1508. Plaintiff’s pro se status does not excuse his failure to keep the Court apprised of his own address. A litigant’s *pro se* status does not excuse compliance with local rules and the Federal Rules of Civil

³ The “power of attorney” document attached as Exhibit 1 to plaintiff’s complaint contains language tending to indicate plaintiff intended Ms. Carter to actually act as his attorney. See ROA.1512, ¶9. A “power of attorney” cannot confer the authority to engage in the unauthorized practice of law and one that purports to do so is a nullity. See *Williamson v. Berger*, 05-83 (La.App. 3 Cir. 06/08/05), 908 So.2d 35.

Procedure. See *Thrasher v. City of Amarillo*, 709 F.3d 509, 512 (5th Cir. 2013) (citing *Martin v. Harrison County Jail*, 975 F.2d 192, 193 (5th Cir.1992) (*per curiam*)).

Plaintiff's pro se status further does not excuse his compliance with Local Rules as the plaintiff previously adhered to these very Rules. Plaintiff alleges he has been at the Alberta Drive, Baton Rouge address since October 15, 2010. ROA.1506. Presumably, he was released from prison on or about October 15, 2010. See ROA.1398. The plaintiff notified the Court of his new address within 30 days of October 15, 2010. *Id.* The record, therefore, reflects that the plaintiff knew of his obligation to notify the Court of an address change and knew how to provide such notification. Considering plaintiff's prior compliance with these Local Rules, the District Court did not abuse its discretion by finding that plaintiff's failure to change his address in 2012 indicated an intent to abandon this lawsuit. See ROA.1499.

C. The Local Rules do not require the Court or other parties suffer actual prejudice or delay before the suit is dismissed.

The plaintiff alleges, "[n]o record indicate[s] that the defendant's [sic] suffered any delay when the service notice was unreturned." ROA.1507. Furthermore, "[i]t did not prevent the court from ruling on pending motions or any facet of the case." *Id.* The Local Rules do not require the Court or other parties suffer actual delay or prejudice before dismissal. Rather, the Rules are clearly

designed to prevent delay by ensuring the Court can contact all parties throughout the litigation. Furthermore, although the Court did rule on defendants' motion to dismiss, ROA.1485, the Court dismissed the suit shortly after realizing that plaintiff likely did not get notice of and would not likely appear at the scheduling conference. See ROA.1497. In other words, the Court apparently opted to dismiss rather than hold a futile hearing with only defense counsel in attendance.

Communications between the Court and a pro se litigant are conducted principally by mail and, thus, it was "incumbent upon [the plaintiff] to inform the clerk of [his] address change[.]" *Pollard, supra* (quoting *Perkins, supra*). The Court was not required to wait for it or the defendants to suffer prejudice from plaintiff's failure to change his own address in the record. That being said, the Court was unable to proceed with setting the case for trial when it could not contact the plaintiff. The plaintiff failed to comply with the Local Rules by failing to keep the Court up-to-date on his contact information. The Court waited over six months after the Ruling was returned before dismissing the suit. The Local Rules establish that dismissal for failure to prosecute is the remedy for a plaintiff's failure to notify the Court of an address change. Dismissal was proper.

III. DISMISSAL WITH PREJUDICE WAS APPROPRIATE.

A subsequent suit would be barred by the applicable statute of limitations and, as such, should be considered a dismissal with prejudice even though the District Court expressed otherwise. *See* ROA.1500.⁴

A district court's "dismissal with prejudice is warranted only where 'a clear record of delay or contumacious conduct by the plaintiff' exists and a 'lesser sanction would not better serve the interests of justice.'" *Gray v. Fid. Acceptance Corp.*, 634 F.2d 226, 227 (5th Cir.1981) (quoting *Durham v. Fla. East Coast Railway Co.*, 385 F.2d 366, 368 (5th Cir.1967), and *Brown v. Thompson*, 430 F.2d 1214, 1216 (5th Cir.1970)). Additionally, where this Court has affirmed dismissals with prejudice, it has generally found at least one of three aggravating factors: "(1) delay caused by [the] plaintiff himself and not his attorney; (2) actual prejudice to the defendant; or (3) delay caused by intentional conduct." [*Price v. McGlathery*, 792 F.2d 472, 474 (5th Cir. 1986)].

Millan v. USAA Gen. Indem. Co., 546 F.3d 321, 326 (5th Cir. 2008). As explained above, the delay was caused solely by the plaintiff's intentional failure to notify the Court of his change of address. Failure to abide by the simple Local Rules was plaintiff's alone and was particularly egregious in light of his prior compliance with the Rules. As further explained above, actual prejudice is not required for this particular failure to abide by Local Rules. That being said, prejudice can be inferred from the undeniable delay resulting from the Court's inability to contact the plaintiff.

⁴ Please see the Standard of Review above at pages 2-3 for a full explanation of why Louisiana's one-year prescription for delictual actions would bar a subsequent suit by the plaintiff.

A. No lesser sanction would serve the interests of justice.

No sanction other than dismissal is available to the Court if she cannot contact the plaintiff. Logic dictates this conclusion. A plaintiff who cannot be contacted cannot receive court orders. Furthermore, a judge with a crowded docket should not be expected to hold a hearing, conference, or trial if she cannot be sure the plaintiff received notice of the setting. Local Rules 41.2 and 11.1 are clearly designed to prevent unnecessary delays by ensuring the parties keep the Court updated on their contact information at every stage of the proceedings. There is no conceivable alternative to dismissal when the plaintiff disappears.

The plaintiff alleges the District Court abused its discretion by not “consider[ing] a broad range of less severe alternatives prior to entering dismissal.” Plaintiff-Appellant’s brief at p. 7 (citing Fed. R. Civ. P. 41(b)). This conclusory allegation does not establish abuse of discretion. The plaintiff does not identify a single less-severe-sanction that could have been considered by the District Court. This is simply because, as explained above, there is no conceivable alternative.

B. The plaintiff was incarcerated for nine months and the Court offered him six months to appear. The record reflects clear delay.

The most significant and pertinent delays in the record are plaintiff’s incarceration for over nine months and the six-month-delay between return of the Ruling and dismissal of the suit.

This Court has recognized that “delay which warrants dismissal with prejudice must be longer than just a few months; instead, the delay must be characterized by ‘significant periods of total inactivity.’ ” *McNeal v. Papasan*, 842 F.2d 787, 791 (5th Cir.1988) (quoting *John v. Louisiana*, 828 F.2d 1129, 1131 (5th Cir.1987)). Our precedents have generally reserved dismissals with prejudice for “egregious and sometimes outrageous delays.” *Rogers v. Kroger Co.*, 669 F.2d 317, 321 (5th Cir.1982). “In short, these are cases where the plaintiff’s conduct has threatened the integrity of the judicial process, often to the prejudice of the defense, leaving the court no choice but to deny that plaintiff its benefits.” *Id.*

Millan, 546 F.3d at 326-27.

The local rules provide litigants a full month to write their new address on a piece of paper and mail it to the Court. See MDLA-LR 41.2. The plaintiff in this case failed to do this simple task. Plaintiff’s address of record was invalid for over nine months – nine times longer than the gracious period provided by the local rules. Furthermore, the Court waited six times longer than required before dismissal. Considering the foregoing, the record reflects clear delay caused solely by the plaintiff and the District Court did not abuse its discretion by dismissing this suit effectively with prejudice.

CONCLUSION

The Judgment entered in favor of the defendants-appellees should be affirmed. The plaintiff abandoned this suit by failing to keep the Court apprised of his proper mailing address. As a result of this failure, a Ruling was returned to the

Court undeliverable and the Court was left with no option but to dismiss this suit. The responsibility for keeping the Court up to date on his contact information rested solely with the plaintiff. He failed for over nine months while he was incarcerated. The District Court did not abuse its discretion by dismissing this suit and the Judgment should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that the foregoing brief was electronically filed on the 16th day of December, 2013, using the court’s CM/ECF system which will provide a notice of electronic filing to counsel of record. I further certify that on this same date, a copy of this brief was served on the *pro se* plaintiff at his most current address of record via First Class United States Mail postage prepaid.

s/Phyllis E. Glazer
PHYLLIS E. GLAZER

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 32 a(7)(B) because this brief contains approximately 4300 words, excluding the parts of the brief exempted by Fed. R. App. P. 32 (a)(7)(B)(iii). This brief was prepared using Microsoft Office Word 2010.

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DATE